

**Wednesday, October 11, 2006**

The Board met at its offices at 450 N Street, Sacramento, at 9:38 a.m., with Mr. Chiang, Chair, Mr. Parrish, Vice Chair, Ms. Yee and Mr. Leonard present, Ms. Mandel present on behalf of Mr. Westly in accordance with Government Code section 7.9.

### **CORPORATE FRANCHISE AND PERSONAL INCOME TAXES HEARING**

James W. James and Xuan T. James, 260720

1999, \$4,889.00 Assessment

2000, \$5,446.00 Assessment

2001, \$3,541.00 Assessment

For Appellant:

James W. James, Taxpayer

Xuan T. James, Taxpayer

For Franchise Tax Board:

Dennis Haase, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issues: Whether appellants have established error in the federal determinations.

Whether the federal determinations are final.

Whether appellants have proof that they ever paid \$500,000.00 to DPEX, Inc.

Appellant's Exhibit: Miscellaneous Documents (Exhibit 10.1)

Respondent's Exhibit: Miscellaneous Documents (Exhibit 10.2)

Action: Upon motion of Ms. Yee, seconded by Mr. Parrish and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, the Board submitted the appeal for decision.

Exhibits to these minutes are incorporated by reference.

### **SALES AND USE TAX APPEALS HEARINGS**

Chintala N. Reddy, 300410 (CH)

10-1-00 to 9-30-03, \$6233.81 Tax, \$623.36 Negligence Penalty

For Petitioner:

Chintala N. Reddy, Taxpayer

For Sales and Use Tax Department:

Cary Huxsoll, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issues: Whether petitioner has established that further adjustment should be allowed based on petitioner's contention that some of the subject tips were distributed to his employees and musicians.

Whether petitioner was negligent.

Action: Upon motion of Ms. Yee, seconded by Mr. Parrish and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, the Board ordered that the petition be submitted for decision.

Blaine, Inc./Heating and Air Conditioning, 290766 (KH)

4-1-96 to 3-31-04, \$32,489.37 Tax, \$00.00 Failure to File Penalty

For Petitioner:

Roger Blaine, Taxpayer

Londa Blaine, Taxpayer

For Sales and Use Tax Department:

Robert Tucker, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

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Issue: Whether petitioner has established that it is entitled to relief because it relied upon erroneous advice.

Action: Upon motion of Ms. Yee, seconded by Mr. Parrish and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, the Board ordered that the petition be submitted for decision.

### **Local Tax Reallocation Hearing**

Cities of Los Angeles and San Jose, LTR04-009

4-1-01 to 12-31-06, \$74,232.00 Tax for each City

For Petitioner: Albin C. Koch, Attorney, City of San Jose  
Robert Cendejas, Attorney, City of Los Angeles

For Sales and Use Tax Department: Carole Ruwart, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: Not subject to disclosure.

Issue: Whether the applicable tax is sales tax or use tax for sales negotiated at the retailer's California locations in Los Angeles or San Jose, where the products were then shipped from Illinois, F.O.B. Illinois.

Petitioner's Exhibit: Miscellaneous Documents (Exhibit 10.3)

Action: Upon motion of Ms. Yee, seconded by Ms. Mandel and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, the Board ordered that the petition be submitted for decision.

### **PROPERTY TAXES HEARING**

#### **Petition for Reassessment of Unitary Escaped Assessment**

Southern California Gas Company (149), 342132

2000, \$7,000,000.00 Unitary Escaped Assessment, \$239,994.00 Penalty, \$1,223,968.00 In-Lieu Interest

2001, \$4,100,000.00 Unitary Escaped Assessment

2002, \$20,400,000.00 Unitary Escaped Assessment, \$685,994.00 Penalty, \$2,263,781.00 In-Lieu Interest

2003, \$15,500,000.00 Unitary Escaped Assessment, \$954,190.00 Penalty, \$2,290,055.00 In-Lieu Interest

For Petitioner: Peter Michaels, Attorney  
David Steele, Principal Tax Advisor  
James Asay, Principal Tax Advisor

For Property and Special Taxes Department: Michael Lebeau, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: Disqualifying contributions were disclosed to Mr. Chiang and Mr. Westly. No other disqualifying contributions were disclosed.

Issue: Whether the Board should reduce the assessments of Petitioner's unitary property for the audited years 2000 through 2003 consistent with the Board's reduction of Petitioner's unitary property assessment in 2004, which was due to a determination that the franchise fees

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used to value economic rent in the 2004 original assessment included nontaxable value attributable to Petitioner's right to conduct business.

Petitioner's Exhibit: Miscellaneous Documents (Exhibit 10.4)

Staff's Exhibit: Miscellaneous Documents (Exhibit 10.5)

Action: Upon motion of Ms. Yee, seconded by Mr. Leonard and unanimously carried, Mr. Parrish, Ms. Yee and Mr. Leonard voting yes, Mr. Chiang not participating in accordance with Government Code section 15626, Ms. Mandel not participating in accordance with Government Code section 7.9, the Board ordered that the petition be submitted for decision.

### **FINAL ACTION ON CORPORATE FRANCHISE AND PERSONAL INCOME TAXES HEARING HELD OCTOBER 11, 2006**

James W. James and Xuan T. James, 260720

Final Action: Upon motion of Ms. Yee, seconded by Ms. Mandel and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, the Board sustained the action of the Franchise Tax Board.

### **FINAL ACTION ON SALES AND USE TAX APPEALS HEARINGS HELD OCTOBER 11, 2006**

Chintala N. Reddy, 300410 (CH)

Final Action: Ms. Yee moved that the petition be redetermined as recommended by the Appeals Division. Mr. Parrish made a substitute motion to apply a \$30,000.00 measure rather than a \$70,000.00 measure. The substitute motion failed for lack of a second.

Upon motion of Ms. Yee, seconded by Mr. Chiang and duly carried, Mr. Chiang, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, Mr. Parrish voting no, the Board ordered that the petition be redetermined as recommended by the Appeals Division.

Blaine, Inc./Heating and Air Conditioning, 290766 (KH)

Final Action: Upon motion of Ms. Yee, seconded by Mr. Leonard and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, the Board ordered that the amnesty interest penalty be relieved if, within 30 days of the Notice of Redetermination, petitioner either: pays the full amount of tax and interest due; or enters into an installment agreement with the Sales and Use Tax Department for full payment of the tax and interest due within 13 months, and successfully completes that installment agreement; otherwise redetermine as recommended by the Appeals Division.

### **SALES AND USE TAX APPEALS HEARING**

Rashed Enterprises, Inc., 241710 (KH)

8-1-99 to 3-31-02, \$139,043.00 Tax, \$13,904.36 Negligence Penalty

For Petitioner: Appearance Waived

For Sales and Use Tax Department: Kevin Hanks, Hearing Representative

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issues: Whether adjustments are warranted to the audited understatement of reported taxable sales.

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Whether the negligence penalty is warranted.

Whether petitioner has established that it is entitled to relief of the amnesty interest penalty.

Action: Upon motion of Ms. Yee, seconded by Ms. Mandel and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, the Board ordered that the petition be redetermined as recommended by the Appeals Division.

### **FINAL ACTION ON SALES AND USE TAX APPEALS HEARING HELD OCTOBER 11, 2006**

#### **Local Tax Reallocation Hearing**

Cities of Los Angeles and San Jose, LTR04-009

Final Action: Upon motion of Ms. Yee, seconded by Mr. Parrish and duly carried, Mr. Chiang, Mr. Parrish, Ms. Yee and Mr. Leonard voting yes, Ms. Mandel voting no, the Board referred this matter to the Business Taxes Committee.

### **FINAL ACTION ON PROPERTY TAXES HEARING HELD OCTOBER 11, 2006**

Southern California Gas Company (149), 342132

Final Action: Ms. Yee moved that the petition be denied as recommended by staff. The motion failed for lack of a second.

The Board deferred consideration of this matter to later in the day.

The Board recessed at 12:16 p.m. and reconvened at 1:33 p.m. with Mr. Chiang, Ms. Yee, Mr. Leonard and Ms. Mandel present.

### **LEGAL APPEALS MATTERS, CONSENT**

With respect to the Legal Appeals Matters Consent Agenda, upon a single motion of Ms. Yee, seconded by Mr. Leonard and unanimously carried, Mr. Chiang, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, Mr. Parrish absent, the Board made the following orders:

Vernon C. Sorenson MD PC, 255501 (UT)

October 11, 2002, \$122,064.00 Tax

Action: Deny the petition for rehearing as recommended by the Appeals Division.

Philip O. Hamilton, 260719 (KH)

10-1-99 to 9-30-00, \$401,933.00 Tax, \$40,193.30 Failure to File Penalty

Action: Deny the petition for rehearing as recommended by the Appeals Division.

### **CORPORATE FRANCHISE AND PERSONAL INCOME TAX MATTERS, CONSENT**

The Board deferred consideration of the following matters: *Del Dietrich*, 268788; and, *Monica E. Ridley (Formerly Monica E. Esparza)*, 341520.

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With respect to the Corporate Franchise and Personal Income Tax Matters Consent Agenda, upon a single motion of Ms. Yee, seconded by Mr. Leonard and unanimously carried, Mr. Chiang, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, Mr. Parrish absent, the Board made the following orders:

**Del Dietrich, 268788**

Action: The Board took no action.

**Expert Dealer Services, LLC, 330468**

1995, 1998 to 2003, \$3,126.51 Claim for Refund, Late Payment Penalty and Interest

Action: Sustain the action of the Franchise Tax Board.

**Douglas Gutierrez, 346083**

2003, \$1,444.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

**Maximum Protection Systems, LLC, 329234**

2002, \$132.00 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

**Fakhradin Mirian and Laura Mirian, 329166**

2001, \$3,315.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

**Monica E. Ridley (Formerly Monica E. Esparza), 341520**

Action: The Board took no action.

**Robyn Ryan, 336552**

2001, \$366.68 Tax, \$100.00 Late Filing Penalty

Action: Sustain the modified action of the Franchise Tax Board.

**Helen Sauermann, 337097**

2003, \$1,224.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

**Third Pine Associates, L. P., 315247**

1998 to 2003, \$1,052.00 Claim for Refund

**1319 Promenade L.P., 315315**

1998 to 2003, \$1,052.00 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

**Edward E. Vargas, 318237**

2000, \$7,835.00 Tax, \$1,958.75 Late Filing Penalty, \$1,567.00 Accuracy-Related Penalty

Action: Sustain the action of the Franchise Tax Board.

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Harold Wachter, 337091

1998, \$1,655.75 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Ken M. Wilson, 335567

1989, \$68.00 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

J. Mwach Polson, 306075

2002, \$1,067.00 Assessment

Action: Deny the petition for rehearing.

Craig Woods Schiemann, 300905

2002, \$1,439.00 Tax, \$359.75 Penalties

Action: Deny the petition for rehearing.

James L. Tarpo, 301163

2002, \$2,527.00 Assessment, \$631.75 Late Filing Penalty

Action: Deny the petition for rehearing.

**HOMEOWNER AND RENTER PROPERTY TAX ASSISTANCE MATTERS, CONSENT**

With respect to the Homeowner and Renter Property Tax Assistance Matters Consent Agenda, upon a single motion of Ms. Yee, seconded by Mr. Leonard and unanimously carried, Mr. Chiang, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, Mr. Parrish absent, the Board made the following orders:

Sonya Carrol, 339327

2005, \$1.00 or more

Action: Sustain the action of the Franchise Tax Board.

Mark Hill, 339290

2003, \$347.50

Action: Sustain the action of the Franchise Tax Board.

Charles B. Holmes, 336604

2005, \$347.00

Action: Sustain the action of the Franchise Tax Board.

Catherine L. Jackson, 336703

2005, \$334.50

Action: Sustain the action of the Franchise Tax Board.

Fay Marylyn Knight, 334697

2005, \$1.00 or more

Action: Sustain the action of the Franchise Tax Board.

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Harold L. Mitchell, 343370

2004, \$347.00

Action: Sustain the action of the Franchise Tax Board.

Vickie Marie Orr, 338826

2005, \$347.50

Action: Sustain the action of the Franchise Tax Board.

Charleane Raines, 339285

2005, \$347.00

Action: Sustain the action of the Franchise Tax Board.

Sheila Laverne Sims, 339325

2004, \$347.00

Action: Sustain the action of the Franchise Tax Board.

Robert F. Waters, Sr., 331516

2005, \$1.00 or more

Action: Sustain the action of the Franchise Tax Board.

Gloria Whitt, 339321

2005, \$1.00 or more

Action: Sustain the action of the Franchise Tax Board.

**SALES AND USE TAX MATTERS, REDETERMINATIONS AND DENIALS OF CLAIMS FOR REFUND, CONSENT**

With respect to the Sales and Use Tax Matters, Redeterminations and Denials of Claims for Refund, Consent Agenda, upon a single motion of Ms. Yee, seconded by Mr. Leonard and unanimously carried, Mr. Chiang, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, Mr. Parrish absent, the Board made the following orders:

California Institute of Technology, 260337 (AP)

4-1-99 to 3-31-02, \$652,232.98

Action: Approve the redetermination as recommended by staff.

Tosco Corporation, 332646 (OH)

1-1-98 to 12-31-02, \$4,999,920.49

Action: Approve the denial of claim for refund as recommended by staff.

Circle K Stores, Inc., 332643 (OH)

4-1-00 to 12-31-02, \$1,440,833.09

Action: Approve the denial of claim for refund as recommended by staff.

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Myprint Corporation, 359474 (EAA)

1-1-03 to 12-31-04, \$57,438.38

Action: Approve the denial of claim for refund as recommended by staff.

The Good Guys-California, Inc., 306015 (CH)

1-1-00 to 12-31-02, \$200,000.00

Action: Approve the denial of claim for refund as recommended by staff.

Novartis Inst.-Funct. Genomics, Inc., 359479 (FH)

10-1-02 to 12-31-05, \$74,395.54

Action: Approve the denial of claim for refund as recommended by staff.

Triad Financial Corporation, 310920 (EA)

10-1-99 to 3-31-05, \$1,981,499.13

Action: Approve the denial of claim for refund as recommended by staff.

**SALES AND USE TAX MATTERS, CREDITS, CANCELLATIONS AND REFUNDS, CONSENT**

With respect to the Sales and Use Tax Matters, Credits, Cancellations and Refunds, Consent Agenda, upon a single motion of Ms. Yee, seconded by Mr. Leonard and unanimously carried, Mr. Chiang, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, Mr. Chiang not participating in *Chevron U.S.A., Inc., 348910*; and, *Citicorp Vendor Finance, Inc., 357942*; Ms. Mandel not participating in accordance with Government Code section 87105 in *Los Angeles SMSA, L. P., 359255*; and, *Verizon Wireless Network Procurement, 316919*; Mr. Parrish absent, the Board made the following orders:

Los Angeles SMSA, L. P., 359255 (OHB)

7-1-05 to 9-30-05, \$120,029.59

Action: Approve the credit and cancellation as recommended by staff. Ms. Mandel not participating in accordance with Government Code section 87105.

Tooling &amp; Special Machines Amer., 359143 (AR)

4-1-03 to 3-31-06, \$151,528.17

Action: Approve the refund as recommended by staff.

Nissan North America, Inc., 308051 (AS)

1-1-02 to 3-31-05, \$135,639.71

Action: Approve the refund as recommended by staff.

Chevron U.S.A., Inc., 348910 (BH)

4-1-05 to 12-31-05, \$95,191.37

Action: Approve the refund as recommended by staff. Mr. Chiang not participating.

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Fleet Card Fuels, 296481 (ARH)

4-1-04 to 9-30-04, \$94,611.40

Action: Approve the refund as recommended by staff.

Press-Enterprise Company, 325581 (EH)

4-1-02 to 3-31-05, \$227,354.82

Action: Approve the refund as recommended by staff.

Circle K Stores, Inc., 271027 (OH)

7-1-02 to 12-31-02, \$1,287,090.13

Action: Approve the refund as recommended by staff.

Zale Delaware, Inc., 299383 (OHC)

1-1-01 to 12-31-03, \$1,195,515.08

Action: Approve the refund as recommended by staff.

Citicorp Vendor Finance, Inc., 357942 (OHC)

10-1-99 to 12-31-02, \$59,072.75

Action: Approve the refund as recommended by staff. Mr. Chiang not participating.

Rational Software Corporation, 359475 (GH)

4-1-00 to 9-30-03, \$221,182.11

Action: Approve the refund as recommended by staff.

Unitek Corporation, 316911 (AP)

4-1-05 to 6-30-05, \$278,058.88

Action: Approve the refund as recommended by staff.

Empire Southwest, LLC., 329580 (OH)

10-1-04 to 6-30-05, \$285,694.21

Action: Approve the refund as recommended by staff.

Hane Chow, Inc., 262557 (CH)

1-1-01 to 12-31-03, \$96,427.59

Action: Approve the refund as recommended by staff.

Myprint Corporation, 301288 (EAA)

1-1-03 to 12-31-04, \$227,434.90

Action: Approve the refund as recommended by staff.

Officemax, Inc., 329568 (OHA)

1-1-01 to 12-31-02, \$762,146.17

Action: Approve the refund as recommended by staff.

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Citrix Systems, Inc., 243834 (OHC)

1-1-00 to 9-30-03, \$198,695.56

Action: Approve the refund as recommended by staff.

Verizon Wireless Network Procurement, 316919 (OHB)

4-1-02 to 6-30-04, \$176,079.12

Action: Approve the refund as recommended by staff. Ms. Mandel not participating in accordance with Government Code section 87105.

Novartis Inst.-Funct. Genomics, Inc., 359478 (FH)

10-1-02 to 12-31-05, \$123,807.98

Action: Approve the refund as recommended by staff.

Long Beach Acceptance Corporation, 259714 (EA)

1-1-03 to 12-31-04, \$1,445,077.62

Action: Approve the refund as recommended by staff.

Triad Financial Corporation, 262507 (EA)

4-1-99 to 3-31-05, \$14,630,633.42

Action: Approve the refund as recommended by staff.

**SPECIAL TAXES MATTERS, RELIEF OF PENALTIES, CONSENT**

With respect to the Special Taxes Matters, Relief of Penalties, Consent Agenda, upon a single motion of Ms. Yee, seconded by Mr. Leonard and unanimously carried, Mr. Chiang, Ms. Yee and Mr. Leonard voting yes, Ms. Mandel not participating in accordance with Government Code section 7.9, Mr. Parrish absent, the Board made the following order:

United Healthcare Insurance Company, 357201 (ET)

1-01-05 to 12-31-05, \$85,386.70

Action: Approve the relief of penalty as recommended by staff. Ms. Mandel not participating in accordance with Government Code section 7.9.

**PROPERTY TAXES MATTERS, CONSENT**

With respect to the Property Taxes Matters, Consent Agenda, upon a single motion of Ms. Yee, seconded by Mr. Leonard and unanimously carried, Mr. Chiang, Ms. Yee and Mr. Leonard voting yes, Ms. Mandel not participating in accordance with Government Code section 7.9, Mr. Parrish absent, the Board made the following orders:

**Petitions for Reassessment of Unitary Value**

Golden State Water Company (101), 358801

2006, \$480,900,000.00 Value

Action: Reduce the 2006 unitary value as recommended by staff. Ms. Mandel not participating in accordance with Government Code section 7.9.

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Valero Refining Corporation (407), 359085

2006, \$1,440,000.00 Value

Action: Reduce the 2006 unitary value as recommended by staff. Ms. Mandel not participating in accordance with Government Code section 7.9.

**Petitions for Penalty Abatement on Unitary Value**

California Northern Railroad Company (810), 359331

2006, \$1,070,000.00 Penalty

Action: Approve the penalty abatement on 2006 unitary value as recommended by staff. Ms. Mandel not participating in accordance with Government Code section 7.9.

San Joaquin Valley Railroad (897), 359332

2006, \$853,000.00 Penalty

Action: Approve the penalty abatement on 2006 unitary value as recommended by staff. Ms. Mandel not participating in accordance with Government Code section 7.9.

**LEGAL APPEALS MATTER, ADJUDICATORY**

Michael A. Olin and Janis G. Olin, 252307 (UT)

November 10, 2001, \$10,050.64 Tax

Considered by the Board: March 7, 2006

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Action: Upon motion of Mr. Leonard, seconded by Ms. Yee and unanimously carried, Mr. Chiang, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, Mr. Parrish absent, the Board ordered that the petition for rehearing be denied and directed staff to work with the taxpayer on a payment plan.

**CORPORATE FRANCHISE AND PERSONAL INCOME TAX MATTERS, ADJUDICATORY**

Apple Computer, Inc., 152016

1989, \$1,258,506.00 Assessment

Considered by the Board: Formal Opinion

Contribution Disclosures pursuant to Government Code section 15626: No disqualifying contributions were disclosed.

Action: The Board deferred consideration of this matter to later in the day due to lack of quorum.

Gold Country Women Investment Club, 287988

2000, \$1,800.00 Claim for Refund

2001, \$1,800.00 Claim for Refund

Considered by the Board: July 18, 2006

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

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Action: Upon motion of Mr. Chiang, seconded by Mr. Leonard and unanimously carried, Mr. Chiang, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, Mr. Parrish absent, the Board adopted a decision sustaining the action of the Franchise Tax Board.

**SALES AND USE TAX MATTERS, REDETERMINATIONS, RELIEF OF PENALTIES/INTEREST, DENIALS OF CLAIMS FOR REFUND AND DENIALS OF RELIEF OF PENALTIES/INTEREST ADJUDICATORY**

James Gamblin, 345457 (EH)

7-01-03 to 2-04-04, \$131,518.25

Considered by the Board: August 29, 2006

Contribution Disclosures pursuant to Government Code section 15626: No contribution disclosure forms were filed. The Members noted that their records disclosed no contributions from this taxpayer, his agent or participants.

Action: Upon motion of Ms. Yee, seconded by Mr. Leonard and unanimously carried, Mr. Chiang, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, Mr. Parrish absent, the Board approved the redetermination as recommended by staff.

K-Mart Corporation, 353218 (OHA)

10-30-05 to 2-25-06, \$1,626,739.56

Considered by the Board: August 29, 2006

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Action: Upon motion of Ms. Yee, seconded by Mr. Leonard and unanimously carried, Mr. Chiang, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, Mr. Parrish absent, the Board approved the relief of penalty as recommended by staff.

Western Digital Technologies, Inc., 238711 (EAA)

6-29-02 to 6-27-03, \$3,044,183.00

Considered by the Board: August 29, 2006

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Action: Upon motion of Ms. Yee, seconded by Mr. Leonard and unanimously carried, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, Mr. Chiang not participating, Mr. Parrish absent, the Board approved the denial of claim for refund as recommended by staff.

Halliburton Energy Services, Inc., 356793 (OHC)

10-01-99 to 12-31-02, \$140,749.62

Considered by the Board: August 29, 2006

Contribution Disclosures pursuant to Government Code section 15626: No contribution disclosure forms were filed. The Members noted that their records disclosed no contributions from this taxpayer, his agent or participants.

Action: Upon motion of Ms. Yee, seconded by Mr. Leonard and unanimously carried, Mr. Chiang, Ms. Yee and Mr. Leonard voting yes, Ms. Mandel not participating in accordance with Government Code section 87105, Mr. Parrish absent, the Board approved the denial of claim for refund as recommended by staff.

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New Vision Technologies, Inc., 334836 (EAA)

1-01-03 to 12-31-03, \$61,633.00

Considered by the Board: August 29, 2006

Contribution Disclosures pursuant to Government Code section 15626: No contribution disclosure forms were filed. The Members noted that their records disclosed no contributions from this taxpayer, his agent or participants.

Action: Upon motion of Ms. Yee, seconded by Mr. Leonard and unanimously carried, Mr. Chiang, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, Mr. Parrish absent, the Board approved the denial of claim for refund as recommended by staff.

Calgen Project Equipment Finance, 355514 (GH)

4-01-05 to 6-30-05, \$51,673.80

Considered by the Board: August 29, 2006

Contribution Disclosures pursuant to Government Code section 15626: No contribution disclosure forms were filed. The Members noted that their records disclosed no contributions from this taxpayer, his agent or participants.

Action: Upon motion of Ms. Yee, seconded by Mr. Leonard and unanimously carried, Mr. Chiang, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, Mr. Parrish absent, the Board approved the denial of relief of penalty as recommended by staff.

#### **SALES AND USE TAX MATTERS, CREDITS, CANCELLATIONS AND REFUNDS, ADJUDICATORY**

Halliburton Energy Services, Inc., 207473 (OHC)

10-01-99 to 12-31-03, \$896,597.12

Considered by the Board: August 29, 2006

Contribution Disclosures pursuant to Government Code section 15626: No contribution disclosure forms were filed. The Members noted that their records disclosed no contributions from this taxpayer, his agent or participants.

Action: Upon motion of Ms. Yee, seconded by Mr. Leonard and unanimously carried, Mr. Chiang, Ms. Yee and Mr. Leonard voting yes, Ms. Mandel not participating in accordance with Government Code section 87105, Mr. Parrish absent, the Board approved the refund as recommended by staff.

Light & Sound Design, Inc., 354454 (AR)

1-01-99 to 12-31-01, \$71,249.51

Considered by the Board: August 29, 2006

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Action: Upon motion of Ms. Yee, seconded by Mr. Leonard and unanimously carried, Mr. Chiang, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, Mr. Parrish absent, the Board approved the refund as recommended by staff.

Virgin Mobile USA, LLC, 290234 (OHB)

7-01-02 to 3-31-04, \$275,092.21

Considered by the Board: August 29, 2006

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Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Action: Upon motion of Ms. Yee, seconded by Mr. Leonard and unanimously carried, Mr. Chiang, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, Mr. Parrish absent, the Board approved the refund as recommended by staff.

Valley Imports, Inc., 345180 (FHA)

10-1-05 to 12-31-05, \$78,602.34

Considered by the Board: August 29, 2006

Contribution Disclosures pursuant to Government Code section 15626: No contribution disclosure forms were filed. The Members noted that their records disclosed no contributions from this taxpayer, his agent or participants.

Action: Upon motion of Ms. Yee, seconded by Mr. Leonard and unanimously carried, Mr. Chiang, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, Mr. Parrish absent, the Board approved the refund as recommended by staff.

## CHIEF COUNSEL MATTERS

### RULEMAKING

#### **Section 100 Changes to Sales and Use Tax Regulations 1610, *Vehicles, Vessels and Aircraft*, and 1705.1, *Innocent Spouse Relief from Liability***

Robert Lambert, Acting Assistant Chief Counsel, Tax and Fee Programs Division, Legal Department, made introductory remarks regarding the request for authorization to amend Sales and Use Tax Regulations 1610, *Vehicles, Vessels and Aircraft*, and 1705.1, *Innocent Spouse Relief from Liability* (Exhibit 10.6).

Action: Upon motion of Ms. Yee, seconded by Mr. Leonard and unanimously carried, Mr. Chiang, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, Mr. Parrish absent, the Board approved section 100 changes to Sales and Use Tax Regulations 1610 and 1705.1 as recommended by staff.

## ADMINISTRATIVE SESSION

### ADMINISTRATIVE MATTERS, CONSENT

With respect to the Administrative Matters, Consent Agenda, upon a single motion of Ms. Yee, seconded by Ms. Mandel and unanimously carried, Mr. Chiang, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, Mr. Parrish absent, the Board made the following orders:

Action: Adopt a resolution for Rosie L. Gentry, Office Technician Typing, Chicago Area Office, Out-of-State District, extending its best wishes on her retirement and its appreciation for her service to the State Board of Equalization and the State of California (Exhibit 10.7).

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Action: Approve proposed revisions to Audit Manual Chapter 6, Vehicle, Vessel and Aircraft Dealers (Exhibit 10.8).

Action: Approve Superior Accomplishment Award Nominees (Exhibit 10.9).

Action: Approve the prepayment rates of sales tax on motor vehicle fuel, diesel fuel and jet fuel as recommended by staff (Exhibit 10.10).

### **BOARD COMMITTEE REPORTS**

#### **Business Taxes Committee**

Action: Upon motion of Ms. Yee, seconded by Mr. Leonard and unanimously carried, Mr. Chiang, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, Mr. Parrish absent, the Board approved the Business Taxes Committee report (Exhibit 10.11).

#### **Property Tax Committee**

Action: Upon motion of Ms. Yee, seconded by Mr. Leonard and unanimously carried, Mr. Chiang, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, Mr. Parrish absent, the Board approved the Property Tax Committee report (Exhibit 10.12).

### **OTHER ADMINISTRATIVE MATTERS**

#### **Executive Director's Report**

Ramon Hirsig, Executive Director, provided an update regarding the Board's Strategic Plan for the years 2007 to 2011.

Mr. Hirsig introduced David Gau, Deputy Director, Property and Special Taxes Department, who provided an update regarding the enforcement of consumer purchases of tobacco products from out-of-state sellers.

#### **Budget Change Proposals**

Karen Johnson, Deputy Director, Administration Department, made introductory remarks regarding the budget change proposals (Exhibit 10.13).

Action: Upon motion of Ms. Yee, seconded by Ms. Mandel and unanimously carried, Mr. Chiang, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, Mr. Parrish absent, the Board approved, BCP No. 12, *AB 1803 – Expanded Workload for Environmental Fee*, as recommended by staff.

Action: Upon motion of Ms. Yee, seconded by Mr. Leonard and unanimously carried, Mr. Chiang, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, Mr. Parrish absent, the Board approved, BCP No. 13, *E-Filing Infrastructure Project*, as recommended by staff.

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Ms. Yee requested staff return with answers to her questions by the November Sacramento Board Meeting.

### **Interagency Agreements Over \$1 Million**

Ms. Johnson made introductory remarks regarding contract renewal of the Department of Toxic Substances Control. This contract provides for the Board of Equalization to administer the Hazardous Substances Tax Program for the Department of Toxic Substances Control. (Exhibit 10.14.)

Action: Upon motion of Mr. Leonard, seconded by Ms. Yee and unanimously carried, Mr. Chiang, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, Mr. Parrish absent, the Board postponed the matter to the November Sacramento Board Meeting.

### **ANNOUNCEMENT OF CLOSED SESSION**

The Board recessed at 2:19 p.m. and reconvened immediately in closed session with Mr. Chiang, Ms. Yee, Mr. Leonard and Ms. Mandel present.

### **CLOSED SESSION**

The Board met to discuss pending litigation (Gov. Code § 11126(e)) and personnel matters (Gov. Code § 11126(a)).

The Board recessed at 2:24 p.m. and reconvened immediately in open session with Mr. Chiang, Ms. Yee, Mr. Leonard and Ms. Mandel present.

Mr. Evans announced that the following matters will be deferred for consideration to the next Sacramento Board meeting: *Southern California Gas Company (149), 342132; Argonaut-Southwest Insurance Company, 264564; and, Apple Computer, Inc., 152016.*

The Board adjourned at 2:25 p.m.

*The foregoing minutes are adopted by the Board on February 1, 2007.*

Note: The following cases were removed from the calendar prior to the meeting: *Peter M. Soley, 310303; and, Marcos Prieto, 339280.*